

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TADEUSZ KSINIIEWICZ,

Plaintiff,

vs.

CITY OF LA MESA, et al.,

Defendant.

CASE NO. 13cv572-LAB (DHB)

**ORDER GRANTING MOTION TO
PROCEED *IN FORMA*
PAUPERIS; AND**

**ORDER SCREENING AND
DISMISSING AMENDED
COMPLAINT**

Plaintiff Tadeusz Ksieniewicz, proceeding *pro se*, filed his complaint on March 12, 2013, along with a motion to proceed *in forma pauperis* (IFP). On March 18, the Court denied his IFP motion without prejudice, noting that it was incomplete. In the same order, the Court noted that, assuming Ksieniewicz filed a complete IFP motion and was granted leave to proceed IFP, the Court would be required to screen his complaint. See 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). The Court is also required to examine its own jurisdiction, *sua sponte* if necessary, and to dismiss the complaint if jurisdiction was lacking. See *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954 (9th Cir.2011) (en banc).

The Court's order of dismissal pointed out that Ksiewicz was bringing only one federal claim, under 28 U.S.C. § 1983 for allegedly unlawful towing of his car, and the remaining claims were supplemental claims arising under state law. The order mentioned two serious

1 obstacles, and directed Ksiewicz to address them in his amended complaint. Those
2 obstacles were, first, the statute of limitations, and second, a case pending in state court in
3 which Ksiewicz was bringing the same or similar claims. The order explained that any
4 amended complaint Ksiewicz filed should show why he is entitled to tolling on his
5 otherwise time-barred claim, and explain the status of any state court proceeding.

6 Ksiewicz then submitted a renewed IFP motion, and an amended complaint. By
7 an order issued April 8, the Court accepted these for filing.

8 Ksiewicz's renewed IFP motion shows he is unable to pay the filing fee and still
9 provide the necessities of life for himself. His motion to proceed IFP is **GRANTED**. The Court
10 is again required to screen the complaint and to dismiss it if it fails to state a claim, or if the
11 Court lacks jurisdiction.

12 The amended complaint does not comply with Fed. R. Civ. P. 8 in that it does not
13 state a cause of action or explain why the Court has jurisdiction. Instead, it is a brief on the
14 issue of tolling, and addresses the *Rooker-Feldman* doctrine, which the Court's order did not
15 mention.¹ In this order, however, the Court will focus on the problems already pointed out to
16 Ksiewicz, which he has had an opportunity to address. Although the issues raised in the
17 state court proceedings were unknown, the amended complaint appears to concede that
18 they are the same, and that they are still pending. Ksiewicz's complaint is that the state
19 courts ought to have given him a hearing instead of deciding his appeal on the written
20 pleadings, and that they are dragging their feet in deciding his appeal. The documents
21 attached to the amended complaint, however, show that he had at least the opportunity to
22 present written briefs to the California court of appeals. The same documents show he is
23 proceeding *pro se* in state court.

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25 ¹ Because the state court action was apparently still pending, it appeared *Rooker-*
26 *Feldman* would not be applicable. Instead, the Court cited *Janopaul + Block Companies,*
27 *LLC v. St. Paul Fire & Marine Ins. Co.*, 830 F. Supp. 2d 976 (S.D.Cal., 2011) for the principle
28 that, where a federal court action involved substantially the same parties and issues as in
state court proceedings, the federal court would apply the doctrine announced in *Colorado*
River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) and abstain pending
resolution of appeals by state court.

1 Under these circumstances, the Court would ordinarily go through *Colorado River*
2 abstention analysis. Here, however, it is not possible to do so because Ksieniewicz
3 addressed the *Rooker-Feldman* doctrine instead of abstention. But in any event, abstention
4 analysis is necessary, because Ksieniewicz's only federal claim is time-barred. As discussed
5 in the Court's order of March 18, Ksieniewicz's claim accrued in the fall of 2010 and is
6 subject to a two-year statute of limitations. Ksieniewicz does not argue that a different statute
7 of limitations applies, only that he is entitled to tolling. His argument is that Defendants
8 delayed his state court case, hoping the statute of limitations would expire, and also that
9 Defendants' attorney on March 29, 2011 wrote him a letter urging him not to appeal his loss
10 in the trial court. And, as mentioned, Ksieniewicz has referred to state courts' foot-dragging.

11 None of these, however, provide any reason for tolling. If Ksieniewicz had a federal
12 claim, he could have filed it in this Court from the start. Any delays he encountered while
13 litigating in state court did not prevent him from filing his complaint in this Court. Ksieniewicz
14 is suing the City of La Mesa, and no exhaustion of administrative remedies is required.
15 Because he is not entitled to tolling, his § 1983 claim must be dismissed. Because the
16 parties are not diverse, the Court cannot exercise supplemental jurisdiction over the state
17 law claims.

18 The amended complaint attempts to add another federal claim, this time arising under
19 the Americans with Disabilities Act. The only mention of Ksieniewicz's disability in either the
20 amended complaint or the original complaint is the fact that he told police he was entitled to
21 leave his car parked in the street without moving it because he had a blue disability placard.
22 This claim arose from the same events as did his § 1983 claim, and accrued at the same
23 time. Even assuming the ADA claim is not also time-barred, see *St. Amand v. Block*, 472
24 Fed. Appx. 807, 808 (9th Cir. 2012) (citing *Pickern v. Holiday Quality Foods, Inc.*, 293 F.3d
25 1133, 1137 n. 2 (9th Cir. 2002)) (holding that California's statute of limitations for personal

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1 injury actions applies to claims brought under Title II of the ADA),² the incident he describes
2 does not give rise to an ADA claim.

3 The original complaint said Ksieniewicz's car was singled out and marked because
4 it was left parked on the street and had not been moved within 72 hours. He alleges police
5 came back later and marked his car again, but not other cars, even though those other cars
6 had been there longer. He does not allege a reason for their singling him out; instead, he
7 merely predicts that the answer, when it is revealed, will shock everyone. The complaint
8 does not allege whether any of the other cars were displaying the same disability placards
9 as Ksieniewicz's car. The complaint alleges that at different times, other cars were not
10 marked or towed even though they had not been moved and exhibited other violations, such
11 as expired registrations and being in inoperable condition. It alleges that, after Ksieniewicz's
12 car was towed, he went to the police station and found out they had towed it. He argued to
13 the police that under Cal. Vehicle Code § 22511.5, he was entitled to park on the street
14 indefinitely, but alleges they told him they didn't care what the law said.

15 Though the complaint doesn't say which title of the ADA Ksieniewicz thinks would
16 apply, claims for adequate parking on public streets are properly analyzed under Title II,
17 which addresses discrimination by public entities in the use of the entity's services,
18 programs, or activities. *See, e.g., Fortune v. City of Lomita*, 823 F. Supp. 2d 1036 (C.D.Cal.,
19 2011). *See also Jones v. City of Monroe, MI*, 341 F.3d 474 (6th Cir. 2003). The complaint
20 doesn't allege Ksieniewicz needs to park for days at a time in the same space because of
21 his disability, nor that he was treated worse than a non-disabled person would have been.
22 *See O'Guinn v. Lovelock Correctional Center*, 502 F.3d 1056, 1060 (9th Cir. 2007) (giving
23 elements for a Title II ADA claim). Rather, his chief complaint is that he was not given the
24 extended parking benefits that California law creates for persons whose vehicles display
25 disabled placards or license plates. These extended parking privileges he claimed are

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27 ² At the time the plaintiff in *St. Amand* brought his claim, the statute of limitations for
28 personal injury actions in California was one year. It is now two years. *See* Cal. Civ. Proc.
Code § 335.1.

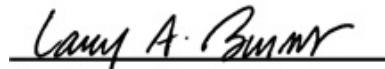
1 available only to disabled persons. See Cal. Vehicle Code § 22511.5(a) (providing that
2 disabled persons whose vehicles display disabled plates or placards are not bound to obey
3 certain generally applicable restrictions on parking). They are also created by state law, not
4 by the ADA.

5 The only remedy available under title III of the ADA is injunctive relief, *Wander v.*
6 *Kaus*, 304 F.3d 856, 858 (9th Cir. 2002), but the complaint doesn't attempt to show why that
7 would be appropriate, nor does it even request it. Although Ksieniewicz owns a car, the
8 complaint does not allege he has had any trouble with police ticketing or towing it since
9 2010. Bearing in mind the limitations period issue, if police or the city were continuing to
10 ticket and tow his car, he would certainly have mentioned it.

11 The Court therefore concludes Ksieniewicz's federal claim is now time-barred, that
12 he cannot state any other claims over which the Court could exercise jurisdiction, and that
13 further amendment would be futile. The complaint is therefore **DISMISSED WITH**
14 **PREJUDICE.**

15 **IT IS SO ORDERED.**

16 DATED: May 9, 2013

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18 **HONORABLE LARRY ALAN BURNS**
19 United States District Judge
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